

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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**ALBERTO MORA, on behalf of him-
self and others similarly situated**

Docket No. 08 CIV 5004 (PAC)

Plaintiff,

-against-

ANSWER

HARVARD MAINTENANCE, INC.,

Defendant.

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Defendant, **HARVARD MAINTENANCE, INC.**, (“Harvard”) by and through its attorneys, **MILMAN LABUDA LAW GROUP PLLC**, hereby answers the Complaint of Plaintiff, **ALBERTO MORA**, (“Mora”), as follows:

1. The allegations set forth in paragraphs number 1, 2 and 20 of the Complaint merely describe the nature of the action and claims made therein. As such, no response is required or made.
2. Defendant hereby admits the truth of the allegations contained in paragraphs numbered 3, 4, 6, 7, 8, 12, 17, 18, 19 and 30 of the Complaint.
3. Defendant hereby denies the truth of the allegations contained in paragraphs numbered 5, 9, 10, 14, 21, 22, 24, 25, 26, 27, 28, 31 and 32 of the Complaint.
4. Defendant denies possession of knowledge and information sufficient to form a belief concerning the truth of the allegations contained in paragraphs numbered 5, 11 and 15 of the Complaint.

5. Defendant hereby admits the truth of that portion of paragraph numbered 23 that alleges that Defendant has possession and custody of records of certain employment records of Plaintiff. Defendant denies possession of knowledge and information sufficient to form a belief concerning the truth of the balance of the allegations contained in paragraph numbered 23 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

6. With respect to all causes of action contained in the Complaint, Plaintiff sets forth no claims upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

7. With respect to all causes of action contained in the Complaint, Plaintiff's claims are barred by limitation of time.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

8. With respect to all causes of action contained in the Complaint, Defendant at all times conducted itself in good faith within the meaning of the Fair Labor Standards Act, as amended (29 U.S.C. §§ 201 *et seq.*) ("FLSA").

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

9. With respect to all causes of action contained in the Complaint, Plaintiff's claims are barred by the doctrine of estoppel.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

10. With respect to all causes of action contained in the Complaint, Plaintiff's claims are barred by his failure to exhaust available remedies.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

11. With respect to all causes of action contained in the Complaint, Plaintiff is barred from asserting claims on behalf of "others similarly situated" because he has failed to satisfy the conditions precedent of either FLSA § 216(b) or Fed. R. Civ. P. R. 23.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

12. With respect to the second cause of action contained in the Complaint, punitive damages are not available under the New York Labor Law.

WHEREFORE, for all of the reasons set forth above, Defendant, **HARVARD MAINTENANCE, INC.** respectfully prays for an Order dismissing the Complaint of the Plaintiff, **ALBERTO MORA**, and each and every part thereof, for the costs and disbursements of the action, including reasonable attorney's fees, and for such other and further relief as to the Honorable Court may seem just and proper.

Dated: Lake Success, NY
July 1, 2008

Perry S. Heidecker, Esq. (PH 6955)
Milman Labuda Law Group PLLC
Attorneys for Defendant
3000 Marcus Avenue, Suite 3W3
Lake Success, New York 11042
(516) 328-8899

TO: Robert L. Kraselnik, Esq.
Law Offices of Robert L. Kraselnik, PLLC
Attorney for Plaintiff
40 Wall Street, 28th Floor
New York, New York 10005
(212) 962-4277